



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**WYOMING REGULATORY OFFICE**  
**2232 DELL RANGE BOULEVARD, SUITE 210**  
**CHEYENNE WY 82009-4942**

October 26, 2012

Wyoming Regulatory Office

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Andrew Johnson  
686 County Road 260  
Fort Bridger, Wyoming 82933-8814

Dear Mr. Johnson:

This letter is in reference to recent dam construction activities on your property, 686 County Road 260, which included discharges of fill material into Six Mile Creek. We understand that those activities were undertaken by you beginning in July 2012 and are near completion. The property is located in the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 30, Township 15 North, Range 115 West, Uinta County, Wyoming.

The U.S. Army Corps of Engineers (USACE) regulates discharges of dredge and fill material into wetlands and other waters of the United States in accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344). The term "waters of the United States" has been broadly defined by statute, regulation, and judicial interpretation to include all waters that were, are, or could be used in interstate commerce such as streams, reservoirs, lakes and adjacent wetlands. The Corps regulations are published in the *Code of Federal Regulations* as 33 CFR Parts 320 through 332. Information on Section 404 program requirements in Wyoming can be obtained from our website:  
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Wyoming.aspx>.

On May 25, 2011, the State Engineer's Office (SEO) granted a stock pond permit for this project. According to the permit, the dam is 18 feet tall, with a high water line elevation of 13 feet. The dam is constructed of compacted earth fill and is buffered on its upstream face by one-foot-thick rock riprap.

On September 5, 2012, I contacted you to inquire about dam construction activities on your property and authorization for such work. I requested that you send information about the project to our office. Following the conversation, we did not receive any information from you about the project.

Ms. Jesse Fernandes of our office arranged a site visit with you for October 11, 2012. On that day, Ms. Fernandes and Mr. Kevin Little from our office visited the site with you and your wife, Katie Johnson, and confirmed the presence of a dam and impoundment on Six Mile Creek. Based on our discussions with you and the site investigation, our staff concluded that fill had been deposited below the ordinary high water mark to dam the creek. The purpose of the dam was to create a fishing pond. There did not appear to be any wetlands in the project area. A geographic positioning system (GPS) device was used to delineate the boundaries of the project area.

Six Mile Creek is a perennial tributary of Blacks Fork River, tributary of the Green River, which is a traditional navigable water. Therefore, Six Mile Creek is likely to be a water of the United States as defined at 33 CFR Part 328.3(a). Based on data collected during the investigation, our staff determined that the construction activities performed on your property resulted in at least 11.85 cubic yards of material being placed below the creek's ordinary high water mark. Construction activities impacted a reach of Six Mile Creek more than 785 feet in length. Dam construction resulted in the complete fill of a reach of creek greater than 40 feet in length and the dam resulted in the inundation of a reach of creek greater than 745 feet in length. Inundation caused by the dam spread beyond your property and onto the neighboring parcel.

In some cases, construction activities may be exempt from Department of the Army authorization or may be authorized by nationwide general permits. The activities on your property were not exempt from authorization. Furthermore, the activities on your property exceeded the terms and conditions of the nationwide permits that would generally be applicable to similar types of activities. Therefore, a standard project-specific permit would have been required prior to proceeding with these activities.

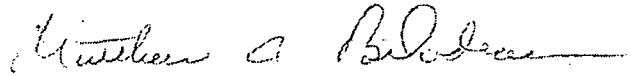
Our records indicate that a standard permit application was never received by this office and Department of the Army authorization was never granted. Therefore, these activities were performed in violation of Section 301(a) of the Clean Water Act (33 U.S.C. §1311(a)). All persons responsible are subject to enforcement procedures by the U.S. Environmental Protection Agency (USEPA). By undertaking unauthorized activities, responsible parties are subject to fines and penalties of up to \$37,500 per day of violation. **You and any other parties responsible for these unauthorized activities are hereby directed to cease and desist any further earth-moving activities on the property in the vicinity of Six Mile Creek.**

A Memorandum of Agreement between the Department of the Army and the USEPA concerning Federal Enforcement of the Section 404 Program of the Clean Water Act dated January 19, 1989, requires notification of the USEPA, thereby allowing the agency an opportunity to determine an appropriate enforcement response. By copy of this letter we have notified the USEPA, Region 8 in Denver, Colorado, that a violation has occurred.

You are encouraged to provide a written response to this office explaining any important circumstances relevant to events described above which should be considered by

the Corps and USEPA in future deliberations. Please provide all comments prior to November 26, 2012. If you have any questions, you may contact Ms. Fernandes at (307) 772-2300 or at [Jesse.Fernandes@usace.army.mil](mailto:Jesse.Fernandes@usace.army.mil) and reference file NWO-2012-02486.

Sincerely,



Matthew A. Bilodeau  
Program Manager  
Wyoming Regulatory Office

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